

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KRAFT FOODS GLOBAL, INC., THE)	
KELLOGG COMPANY, GENERAL)	
MILLS, INC., and NESTLÉ USA, INC.,)	
)	
Plaintiffs,)	No. 1:11-cv-08808
)	
v.)	Judge Steven C. Seeger
)	
UNITED EGG PRODUCERS, INC.,)	
UNITED STATES EGG MARKETERS,)	
INC., CAL-MAINE FOODS, INC., and)	
ROSE ACRE FARMS, INC.,)	
)	
Defendants.)	
)	

[UPDATED DRAFT] FINAL PRETRIAL ORDER

This Order will control the course of the trial and may not be amended except by consent of the parties, or by order of the Court to prevent manifest injustice.¹

ENTERED:

United States District Judge

Date: _____

¹ The parties jointly submit this Updated Draft Pretrial Order to reflect the substantial progress they have made toward resolving issues that were outstanding when they filed the original Draft Final Pretrial Order on August 22, 2023.

Dated: September 8, 2023

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2. JURISDICTION

This action is filed under Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15 and 26) to recover damages Plaintiffs have sustained for Defendants' violations of Section 1 of the Sherman Act (15 U.S.C. §§ 1).² This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1337. The parties do not dispute jurisdiction.

3. TYPE AND LENGTH OF TRIAL

This will be a trial by jury. The parties estimate that this trial will last five weeks.

² In their complaint, the Plaintiffs also sought injunctive relief. Given the long passage of time and the lack of discovery for a decade, the Plaintiffs no longer seek injunctive relief.

4. **CLAIMS FOR TRIAL**

Plaintiffs' prayer for relief stems from one claim against Rose Acre Farms, Inc., Cal-Maine, Inc., United Egg Producers, and United States Egg Marketers, alleging that each Defendant committed acts in furtherance of a combination and conspiracy constituting an unlawful restraint of interstate commerce in violation of Section 1 of the Sherman Act.

5. **RELIEF SOUGHT**

Plaintiffs seek the following itemized damages and related relief:

Damages	Amount
Trebled monetary damages for overcharges as detailed in the expert report of Michael Baye.	<p>An exact amount to be determined at trial following a verdict on liability. The amount for each plaintiff (trebled) includes:</p> <p>GMI: \$11,431,280 (\$34,293,840) Kellogg: \$13,819,951 (\$41,459,853) Kraft: \$84,617,126 (\$253,851,378) Nestle: \$22,089,663 (\$66,268,989)</p> <p>For a total damages award not less than \$395,874,060.³</p>
Cost of suit, including a reasonable attorney's fees.	An amount to be determined following verdicts on liability and damages.

6. **CASE STATEMENT**

This is a civil case brought under Section 1 of the Sherman Act. In civil matters, the parties who bring the lawsuits are called plaintiffs. The Plaintiffs here are: Kraft Foods Global, Inc., The Kellogg Company, General Mills, Inc., and Nestlé USA, Inc. The Plaintiffs purchased egg products from egg producers. Egg products are made from eggs and come in various forms including liquid, frozen, and dried.

³ These amounts are based on the maximum calculations in Supplemental Exhibit 22 to Dr. Baye's October 12, 2018 *Second Arizona Supplement To Expert Report of Michael R. Baye*, page 4.

In civil matters, the parties against whom a lawsuit is brought are called defendants. The Defendants here are Rose Acre Farms, Inc., Cal-Maine, Inc., United Egg Producers, and United States Egg Marketers. Both Rose Acre and Cal-Maine are producers and sellers of eggs and egg products. United Egg Producers, which will sometimes be referred to as UEP, is an industry association made up of egg producers. The United States Egg Marketers, which is sometimes referred to as USEM, is an industry association of egg producers that arranges for the export of eggs from the U.S. to other countries.

The Plaintiffs allege that the defendants and other egg producers agreed or conspired to limit the United States supply of eggs, which then drove up the domestic price of egg products in violation of the nation's antitrust laws. The Plaintiffs further allege that they were injured by this conduct in that it caused them to pay higher prices for egg products than they otherwise would have paid.

The Defendants deny that they conspired to limit the supply of eggs or egg products, and they further deny that they conspired to increase the price of eggs or egg products. The Defendants deny that the Plaintiffs were injured, and also deny that the prices Plaintiffs paid were higher than they otherwise would have paid.

7. VOIR DIRE QUESTIONS

The parties' *voir dire* questions are attached hereto as Appendices 7-1 through 7-3.

Written Questionnaire

The parties' joint questions in the form of a questionnaire are attached hereto as Appendix 7-1.

Oral Questions

The parties' joint questions to be asked orally are attached hereto as Appendix 7-2.

Proposed Questions

Proposed questions to which one party objects are attached hereto as Appendix 7-3.

8. WITNESSES [UPDATED]

The parties' witness lists and related submissions are attached hereto as Appendices 8-1 through 8-4. The parties have been conducting meet-and-confer sessions regarding deposition designations in good faith, and thus far have made substantial progress limiting objections and issues to present to the Court for resolution.

As of the filing of the Draft Pretrial Order on August 22, 2023, the parties began with individuals on Plaintiffs' list of witnesses testifying by designation, namely, Don Bell (Aug. 20-21, 2013 deposition, in connection with Plaintiffs' affirmatives as well as Defendants' affirmatives), Phyllis Blizzard (Feb. 15, 2013 deposition), Jeff Hardin (Apr. 18, 2014 deposition), Ken Klippen (Apr. 29, 2014 deposition and Nov. 19, 2019 trial testimony), John Mueller (Nov. 6, 2019 trial testimony), Al Pope (May 21, 2013 deposition, in connection with Plaintiffs' affirmatives as well as Defendants' affirmatives), and Linda Reickard (Apr. 3, 2014 deposition and May 9-10, 2018 trial testimony).

The Parties have continued to work diligently to narrow objections. Since August 22, 2023, the parties have conducted meet-and-confers for Gregory Hinton (Mar. 20, 2014 deposition and Dec. 3 & 4, 2019 trial testimony), Greg Marshall (Nov. 26 and Dec. 3, 2019 trial testimony), David Hurd (May 22, 2018 and Dec. 3 2019 trial testimony), Marcus Rust (Mar. 5-7, 2014 deposition and May 11 & 14, 2018 and Nov. 13-14, 2019 trial testimony), Anthony Airoso (May 7, 2018 trial testimony), James Carlson (Nov. 12, 2019 trial testimony), Gregg Ostrander (Mar. 5, 2014 deposition), Gene Gregory (June 25-27, 2013 deposition), and Karen Brown (Apr. 23, 2014 deposition).

The parties are continuing this meet-and-confer process and will provide further updates to the Court in advance of the pretrial conference. As that process continues, the parties will also be preparing bases for admission regarding designations for which objections remain.

Plaintiffs' Witness Lists [Updated]

Plaintiffs' witness lists and any objections thereto are attached hereto as Appendix 8-1.

Plaintiffs' Designations

Plaintiffs' designations of prior testimony and any objections thereto are attached hereto as Appendix 8-2.

Defendants' Witness Lists [Updated]

Defendants' witness lists and any objections thereto are attached hereto as Appendix 8-3.

Defendants' Designations

Plaintiffs' designations of prior testimony and any objections thereto are attached hereto as Appendix 8-4.

9. EXHIBITS [UPDATED]

The parties' exhibit lists are attached hereto as Appendices 9-1 through 9-3. Since the filing of the Draft Pretrial Order on August 22, 2023, the parties have updated their exhibit lists as follows: (a) Defendants' Exhibit List has been updated to reflect business record stipulations reached by the parties, adding objections by Plaintiffs to additional exhibits, and revising Plaintiffs' objections to certain exhibits; (b) Plaintiffs' Exhibit List has been updated to reflect business record stipulations reached by the parties; and adding objections by Defendants to additional exhibits.

The parties have agreed that they will not object to the introduction of an exhibit introduced during cross-examination of a witness solely on the basis that the exhibit does not appear on the exhibit lists contained in this Order.

Pursuant to stipulation of the parties memorialized in an order dated March 19, 2014, by Judge Pratter, (2:08-md-02002-GP, D.E. #923), the parties have agreed that files produced by the parties in response to any party's discovery requests is authentic for purposes of Federal Rule of Evidence 901.

Given the number and volume of exhibits involved in this case, the parties have not filed each exhibit on the docket in advance of the pretrial conference. The parties determined this approach was most in line with paragraphs 9.c. and 9.d. of the Court's Standing Order on Final Pretrial Order after attempting unsuccessfully to contact the Courtroom Deputy to resolve this issue. The parties are prepared to further address this issue with the Court, including prior to the pretrial conference.

Plaintiffs' Exhibits [Updated]

Plaintiffs' exhibit list is attached hereto as Appendix 9-1.

Defendants' Exhibits [Updated]

Defendants' exhibit list is attached hereto as Appendix 9-2.

Joint Exhibits

The parties are conducting meet-and-confer sessions to address joint exhibits and will update the Court in advance of the pretrial conference.

10. UNDISPUTED FACTS AND EVIDENTIARY STIPULATIONS

The parties' undisputed facts and evidentiary stipulations are attached hereto as Appendices 10-1 and 10-2.

Undisputed Facts

The parties' joint statement of facts is attached hereto as Appendix 10-1.

Evidentiary Stipulations

The parties' evidentiary stipulations are attached hereto as Appendix 10-2.

11. PROPOSED FINDINGS AND CONCLUSIONS

As this is a jury trial, no proposed findings of fact or conclusions of law are submitted with this Order.

12. PROPOSED VOIR DIRE QUESTIONS

The parties' proposed *voir dire* questions are attached hereto as Appendices 7-1 through 7-3, as described above.

13. PROPOSED JURY INSTRUCTIONS [UPDATED]

The parties' proposed jury instructions are attached hereto as Appendices 13-1 through 13-7.

Agreed Instructions

The parties' agreed jury instructions are attached hereto as Appendix 13-1.

Plaintiffs' Disputed Instructions

Plaintiffs' disputed instructions are attached hereto as Appendix 13-2.

Defendants' Objections To Plaintiffs' Disputed Instructions

Defendants' objections to Plaintiffs' disputed instructions are attached hereto as Appendix 13-3.

Defendants' Disputed Instructions

Defendants' disputed instructions, with Plaintiffs' objections, are attached hereto as Appendix 13-4.

Plaintiffs' Objections To Defendants' Disputed Instructions [Updated]

Plaintiffs' objections to Defendants' disputed instructions are attached hereto as Appendix 13-5.

Plaintiffs' Proposed Verdict Form [Updated]

Plaintiffs' proposed verdict form and Defendants' objections thereto are attached hereto as Appendix 13-6.

Defendants' Proposed Verdict Form [Updated]

Defendants' proposed verdict form and Plaintiffs' objections thereto are attached hereto as Appendix 13-7.

14. DISCOVERY

Other than Plaintiffs' deposition requests for Defendants' newly disclosed witnesses, the parties agree that all discovery is complete, including the depositions of expert witnesses.

Defendants object to Plaintiffs' characterization that Defendants are offering "newly disclosed witnesses," as these individuals were timely disclosed to Plaintiffs in 2022 in advance of the previously scheduled trial, and Plaintiffs never sought to depose these witnesses until now on the eve of trial in connection with the filing of this Pretrial Order.⁴

⁴ Plaintiffs' position on this issue is set forth in their objections to Defendants' witness lists contained in Appendix 8-3.

Dated: September 8, 2023

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